

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

**E.W.**, by and through her parents and natural guardians, Joseph and Heather Williams; **J.W.**, by and through his parents and natural guardians, Joseph and Heather Williams; **JOSEPH WILLIAMS**, individually; **HEATHER WILLIAMS**, individually; and the **ROMAN CATHOLIC DIOCESE OF BURLINGTON, VERMONT**,

*Plaintiffs,*

Case No. 2:22-CV-59-cr

v.

**DANIEL M. FRENCH**, in his official capacity as Secretary of the Vermont Agency of Education; **JEANNÉ COLLINS**, in her official capacity as Superintendent of the Rutland Northeast Supervisory Union; and the **BARSTOW UNIFIED UNION SCHOOL BOARD OF DIRECTORS**,

*Defendants.*

**JOINT STIPULATED MOTION TO STAY PROCEEDINGS**

Pursuant to Fed R. Civ. P. 7(b)(1), the parties jointly move the Court to stay proceedings pending the U.S. Supreme Court's resolution of *Carson v. Makin*, No. 20-1088 (Argued December 8, 2021); 979 F.3d 21 (1st. Cir 2020). In support of their motion, the parties provide the following.

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). When it comes to motions to stay proceedings, courts have identified five factors of consideration: "(1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice to the plaintiffs if delayed;

(2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.” *Catskill Mountains Chapter of Trout Unlimited, Inc. v. U.S. E.P.A.*, 630 F. Supp. 2d 295, 304 (S.D.N.Y. 2009). Here, all factors favor staying proceedings pending the outcome of *Carson*.

On December 8, 2021, the U.S. Supreme Court heard oral argument in *Carson v. Makin*, No. 20-1088.<sup>1</sup> *Carson* presents the Court with an opportunity to address the religious “status-use distinction,” which could have major implications for the proper outcome of this case. The Court will likely issue an opinion in that case before its summer recess, by the end of next month. Plaintiffs filed their complaint on February 24, 2022, and motion for preliminary injunction on March 7, 2022. *See* ECF Nos. 1, 5. Defendants subsequently moved to dismiss. ECF Nos. 26, 27. On April 14, 2022, Plaintiffs filed a stipulated motion to suspend the parties’ briefing schedule and preliminary injunction hearing date, which this Court granted. ECF Nos. 31, 32.

Plaintiffs and School Defendants have discussed a non-judicial resolution of this matter that could obviate the need for judicial involvement and injunctive relief. Although a resolution has not yet been reached, the parties believe those discussions would benefit from legal clarity that the Supreme Court’s *Carson* decision may provide. Additionally, if a non-judicial resolution of the conflict is not possible, the Parties’ briefing and this Court’s consideration of the legal issues will be aided by the Supreme Court’s *Carson* opinion. Legal guidance from the Supreme Court on the religious “status-use distinction” may clarify the constitutionality of Vermont’s “adequate safeguards” requirement. The School Defendants agree to continue to pay tuition for the Williams family during the pendency of a stay. The parties will submit

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<sup>1</sup> The Docket for *Carson* is available online at: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-1088.html>

a briefing schedule to the Court after the Supreme Court issues its *Carson v. Makin* decision.

### **CONCLUSION**

WHEREFORE, for the reasons stated herein, the parties ask the Court to stay proceedings in this case pending the U.S. Supreme Court's resolution of *Carson v. Makin*, No. 20-1088.

Respectfully submitted this 4th day of May 2022.

*s/ Thomas E. McCormick*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties.

Dated May 4, 2022, by:

*s/ Thomas E. McCormick*

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